

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

ARCHER AND WHITE SALES, INC.,

Plaintiff,

V.

HENRY SCHEIN, INC., DANAHER CORPORATION, INSTRUMENTARIUM DENTAL INC., DENTAL EQUIPMENT LLC, KAVO DENTAL TECHNOLOGIES, LLC, DENTAL IMAGING TECHNOLOGIES, CORPORATION, PATTERSON COMPANIES, INC., BENCO DENTAL SUPPLY CO.,

Defendants.

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CIVIL ACTION NO. 2:12-CV-00572-JRG

ORDER


Before the Court is Plaintiff Archer and White Sales, Inc.’s (“Archer”) Emergency Motion to Compel Henry Schein, Inc. (“Schein”) to Produce Stanley Bergman and Mark Mlotek for Deposition (“Motion”). (Dkt. No. 232). Subsequent to filing the Motion the Parties submitted a Joint Submission on Plaintiff’s Request to Depose Mark Mlotek and Stanley Bergman. (Dkt. No. 274). In the Joint Submission, the Parties informed the Court that “Schein has agreed to produce Mlotek for deposition.” (*Id.* at 1). The Parties maintained their disagreement as to the deposition of Mr. Stanley Bergman. Accordingly, the sole remaining issue for the Court with regard to the Motion is to determine whether the production of Mr. Bergman for deposition is required.

The Court notes Mr. Bergman’s unequivocal declaration that he has no unique personal knowledge of the facts at issue in the lawsuit and, importantly, no specific recollection of anything

that was said or that happened at the meetings which are the subject of the Motion to Compel. (Dkt. No. 251 Ex. 1 at 2 (“7. I understand that Plaintiff has said that Mark Mlotek and I met with Jim Archer, Sr., in the late 1990s. I have no specific recollection of anything that was said or that happened at those meetings.”). The Court also notes Schein’s production of Mr. Mlotek, who also attended those meetings. (Dkt. No. 274). Having considered the Motion and the relevant authorities and, in view of the information contained in Mr. Bergman’s declaration and the Parties’ Joint Submission informing the Court of the production of Mr. Mlotek for deposition, the Court is of the opinion that the Motion should be and hereby is **DENIED**.

So Ordered this

Feb 20, 2018



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE